IN THE HIGH COURT OF PUNJAB AND HARYANA AT

HANDIGARH.

C.W.P. No. 13329 of 2005

Date of Decision: 11.12.2006

Ram Kumar

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. Ashok Arora, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,

for the respondents.

JUDGMENT

M.M. KUMAR, J.

The prayer made by the petitioner in the instant petition is for quashing show cause notice dated 15.1.2002 (P-2) and enquiry report Annexure P-1. A further prayer has been made for directing the respondents to release the amount of gratuity i.e. Rs. 35,611/- along with interest @ 18% per annum from the date of retirement till its realization.

The petitioner has superannuated on 31.12.2001 from the

post of Deputy Superintendent in the office of Divisional Forest Office, Social Forestry Project, Hisar. Out of his retiral benefits/gratuity an amount of Rs. 35,611/- has been withheld on the ground that in a pending case of Ratna Ram in the Labour Court, Hisar, he did not attend the Court nor produced the muster roll and attendance record pertaining to the workman Ratna Ram. After his retirement, a show cause notice dated 15.1.2002 was served upon him (P-2) to which he sent a reply dated 11.2.2002 (P-4). Without issuing any charge sheet or holding regular inquiry against the petitioner an alleged enquiry report was prepared, holding the petitioner guilty of financial loss caused to the department (P-1). The aforementioned show cause notice and enquiry report are subject matter of challenge in the instant petition.

After hearing learned counsel for the parties we are of the considered view that the matter is not res-integra as in a catena of judgments this court has dealt with the question `whether pensionary benefits could be withheld merely on the ground of issuance of a show cause notice before the date of retirement.' The view taken by a Division Bench of this Court in the case of Kirat Gopal v. Haryana Vidyut Parsaran Nigam Ltd. and others (C.W.P. No.13039 of 1999 decided on 20.3.2000) had gone in favour of the petitioner. In the afore-mentioned judgment, reliance has been placed on the judgment of Hon'ble the Supreme Court in P.R. Nayak v. Union of India, AIR 1972 SC 554, wherein it was laid down that the issuance of charge sheet for initiation of departmental inquiry is a sine qua non. Even otherwise under Rule 2.2 (b) of the Punjab Civil Services Rules,

Volume-II, (as applicable to State of Haryana) the aforementioned legal position is absolutely clear. The explanation appended to Rule 2.2(b) in so far as is relevant to the present case reads as under:-

> "Explanation.- For the purpose of this rule-
>
> (1) departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are issued to him or, if the officer has been placed under suspension from an earlier date, on such date; and....."

In view of the above, on the basis of principle and precedents we are of the view that the impugned action of the respondents in withholding an amount of Rs. 35,611/- from gratuity is held to be illegal. Accordingly, a direction is issued to the respondent to release all the retiral dues of the petitioner. The petitioner shall also be entitled to interest at the rate of 9% per annum on the amount of delayed payment from the date of his retirement till the date of payment. In that regard reliance may be placed on the Full Bench judgment of this Court in the case of **R.S. Randhawa v. State of Punjab, 1997(3) RSJ 318**.

Needful shall be done within a period of two months from the date a copy of the order is received by the respondents.

The petition stands disposed of in the above terms.

(M.M. KUMAR)

JUDGE

(M.M.S. BEDI)
JUDGE

December 11, 2006

Pkapoor